

## CHAPTER 3 PROJECT EXECUTION

### 3-1. Introduction.

a. This chapter discusses project execution requirements for USACE elements involved in OE response projects. Topics discussed in this chapter include: Business Management Practices; Project Prioritization; the Project Team Approach; Project Management Plans; Scheduling; Project Funding; Project Reporting Requirements; Contracting; Estimating; Property Management; Real Estate Activities; and Environmental Considerations.

b. Project Management for OE projects will be implemented in accordance with ER 5-1-11.

3-2. Business Management Practices. USACE has instituted business processes that will enhance service to its customers, provide a focal point for interface with customers, effectively leverage available resources across functional and geographic boundaries, and produce high quality, cost-effective services and products for its customers. Business management practices will be implemented in accordance with ER 5-1-11.

### 3-3. Project Prioritization.

a. USAESCH is responsible for providing an annual recommendation on the priority listing of OE projects to each MSC. The list is divided into four parts: Conventional Archives Search Reports (ASR) complete; non-stockpile Chemical Warfare Materiel (CWM) ASRs complete; Conventional Future ASRs; and CWM Future ASRs. A sample list is provided on the website: <http://www.usace.army.mil/inet/usace-docs>. MSC Commanders will review the list and make final decisions for project prioritization.

b. The priority list ranks each project in descending order by Risk Assessment Code (RAC) score, which is discussed in further detail in Chapter 6. Based on the list, the district will give funding prioritization to the sites with higher RAC scores. The list will require periodic maintenance as ASRs are completed and discrepancies are resolved.

### 3-4. Project Team Approach.

a. USACE implements a project team approach to execute OE response projects. The OE project team is led by the PM, who is responsible for overall coordination of OE project team members. Each OE response project will have a single PM, regardless of how many USACE organizations are on the OE project team, to ensure single point accountability for the overall management and leadership of the project.

b. The OE project team members include the PM; representatives from the district as required; the OE Design Center; the OE MCX, as required; the Hazardous, Toxic, and Radioactive Waste (HTRW) MCX and/or HTRW Design Center, as required; federal land managers; the prime contractor PM; the Native American Tribal Government POC, if applicable; and other key technical and non-technical individuals, as appropriate.

3-5. Project Management Plans. For each project, the PM will develop a Project Management Plan (PMP) in accordance with ER 5-1-11. This plan will present the baseline SOW, project execution strategy, project schedule, and resources (dollars and manpower) including contingencies. The PMP is a living, working level document that records the project history, project requirements, and depicts the future direction of the project.

3-6. Scheduling. The PM is responsible for establishing and maintaining the project schedule in coordination with the OE project team, as set forth in applicable regulations and guidelines, and as stipulated in the PMP.

3-7. Funds Control and Financial Reporting.

a. General. Funding may be received through a direct funding allotment (i.e., Funding Authorization Document) or on a reimbursable basis by DD Form 448, Military Interdepartmental Purchase Request (MIPR). Funding from an outside customer will be received by MIPR.

b. District Funding. The PM is responsible for programming all OE project funding needs regardless of executing command. Districts will request and receive funding from HQUSACE through the annual work plan.

c. OE Design Center Funding. The OE Design Center will submit funding requirements to the PM for inclusion in the annual OE work plan. Work will be initiated upon receipt of funds.

(1) In-House Funding. The OE Design Center will receive in-house project funds from HQUSACE based on the approved annual work plan.

(2) Contract Funds. The OE Design Center will receive contract funds from HQUSACE by written request through the PM.

(3) For projects other than FUDS, the OE Design Center will receive funds from the PM by MIPR.

d. OE MCX Funding. The OE MCX will receive program-related funds for OE program tasks from HQUSACE. The OE MCX may receive OE project funding from the OE Design Center or district for project-related tasks.

e. Funding by an Outside Agency. Project funding may also be provided by an outside agency for which work is being performed.

f. Financial Reports. The PM is responsible for project financial reporting. Reports will be submitted as required by ER 5-1-11. The OE Design Center will provide funding information to the PM as requested.

3-8. Project Reporting Requirements. The PM will prepare all project-related reports as required by HQUSACE. The PM will also ensure that the Project Management Information System and Defense Site Environmental Restoration Tracking System databases are kept up to date. The OE Design Center will provide project information to the PM, as requested.

3-9. Contracting. The following general guidance on the organizational functions, contracting procedures, contract types, and solicitation process for OE-related contracts has been established to standardize OE response contracting activities and improve consistency in services obtained from contractors. Contracts include Architect-Engineer (A-E) Contracts and Service Contracts.

a. USACE Organizational Functions for OE Response Contracting.

(1) OE Design Center.

(a) The OE Design Center will evaluate its contract requirements and solicit and award OE response contracts as needed. Items to consider include customer needs, project workload, reasonable contingencies for unknown requirements, resources available within the government, and private sector capabilities.

(b) When a removal action is transferred to a district, the OE project team will determine whether the OE Design Center or the district will award the contract. The OE MCX must review and provide comments for safety and technical adequacy on all contracts for OE actions. The project file will contain full documentation regarding the decision reached on project execution strategy including actions taken to address each issue.

(c) The OE Design Center will perform all contracting actions for TCRAs and sites containing ordnance for which the risk of accidental detonation is unusually high. Sites with unusual risk include impact areas, test ranges or open burn/open detonation sites where scatterable mine systems and other sensitive electronically fuzed ordnance items have been disposed or fired. Such sites also include manufacturing and disposal facilities that have been subjected to accidental fires or explosions and require remediation.

(d) The US Army Corps of Engineering and Support Center, Huntsville (USAESCH) OE Design Center will perform all contracting actions for non-stockpile CWM sites.

(2) OE MCX.

(a) The OE MCX will provide comments or written concurrence or non-concurrence for safety and technical adequacy on all contract packages for OE-related services. The project file must include documentation of actions taken in response to the OE MCX comments.

(b) The OE MCX will maintain the current OE contract DIDs for inclusion in every OE contract. The OE Design Center and/or district approved to execute response actions may consult the OE MCX website for these items (<http://www.hnd.usace.army.mil/oew>).

(c) OE MCX personnel are available to participate in the Contract Review Board process for award of OE contracts, as requested.

b. Acquisition Planning. Acquisition planning should be completed prior to the OE response contract solicitation process. The acquisition plan, a coordinated and integrated plan for fulfilling an agency's need in a timely manner and at a reasonable cost, contains the overall strategy for managing the acquisition. If new or stand-alone contracts are developed for a removal action, the acquisition plan will document the types of contracts considered. All OE project team members should participate in the acquisition planning stage to select the appropriate contract type in terms of job accomplishment and cost efficiency. Federal Acquisition Regulation (FAR), Part 7 contains general procedures for the acquisition planning process.

c. Contract Types. The nature of OE response projects requires maximum contract flexibility. This flexibility is normally achieved by using contracts with provisions for issuing both fixed-price and cost-reimbursable task orders. The CO will make the final determination of contract type and will serve as the PM's principal advisor on all contract matters.

(1) Fixed-price contracts/task orders. Whenever possible, fixed-priced contracting should be used to complete EE/CA and OE removal actions. For example, if data exists that identifies or defines the quantities of UXO to be removed (e.g., geophysical mapping and analysis has been completed), fixed-price contracts are preferred over cost-reimbursable contracts. In most cases, however, it is not possible to estimate EE/CA and OE removal action costs to the degree of confidence necessary to negotiate and award a fixed-price contract.

(2) Cost-reimbursable contracts/task orders.

(a) Cost-Plus-Fixed-Fee (CPFF) and Time-and-Materials (T&M) are the most commonly used cost-reimbursable contracts for EE/CAs and OE removal actions. These contracts allow flexibility when the removal quantities cannot be sufficiently estimated prior to execution. The disadvantage of using CPFF contracts is that they place an additional administrative burden on the government. Similarly, T&M contracts have a disadvantage in that they require oversight of the contractor to ensure that efficient methods and effective cost controls are being used. The

PM, project engineers, OE Safety Specialist, and other members of the OE project team may be assigned contract surveillance duties and should become familiar with the provisions and terms of the cost-reimbursable contract.

(b) Other cost-reimbursable contracts (e.g., Cost-Plus-Incentive-Fee and Cost-Plus-Award-Fee) may also be used for EE/CA and OE removal action contracts.

d. Contracting for EE/CAs.

(1) Requirements for EE/CA contracts can be obtained from the OE MCX but generally include the following items: engineering and design; geophysical mapping; sampling; risk assessment; cost analyses; report preparation; public meeting support; UXO personnel qualifications; and OE removal procedures. The UXO related portions of the RFP for OE contracts (i.e., SOW, DIDs, and Contract Data Requirements Lists [CDRL]) will be submitted to the OE MCX for review prior to solicitation.

(2) A-E contracts are generally utilized for EE/CAs.

e. Contracting for OE Removal Actions.

(1) Contracts for OE removal actions will include OE specific requirements such as UXO personnel qualifications and OE removal procedures. Requirements can be obtained from the OE MCX.

(2) OE removal actions should be executed through a site-specific stand-alone contract or a task order to an existing OE Design Center Indefinite Delivery Order (IDO) contract. When an OE Design Center awards a stand-alone contract, full contracting authority may be transferred to the district. When awarding a task order to an established OE Design Center IDO contract, the district must agree to management controls and reporting mechanisms established by the OE Design Center CO/COR.

(3) When a removal action is transferred to a district, the OE project team will determine whether the OE Design Center or the district will award the contract. The OE MCX must review and provide comments for safety and technical adequacy on all contracts for OE actions. If the OE project team does not reach a consensus regarding project execution strategy, the MSC Commander will determine the contract to be used. The project file will contain full documentation regarding the decision reached on project execution strategy including actions taken to address each issue.

f. Contract Solicitation Process. USACE follows normal contracting procedures, as established in the FAR, Defense Federal Acquisition Regulation Supplement, Army Federal Acquisition Regulation Supplement, and Engineer Federal Acquisition Regulation Supplement in soliciting OE contracts.

3-10. Estimating. This section presents an overview of the resources available and requirements for estimating the cost of an OE response action.

a. Cost Estimating Tools. In preparing cost estimates for the OE program, the government cost estimator or project engineer must first consider the intent of the cost estimate in order to select the best cost estimating tool.

(1) Parametric Estimating.

(a) If the objective is to estimate an order of magnitude cost for budgetary purposes, then a parametric model is used to provide costs for various phases of the project. The recommended USACE software program is the Remedial Action Cost Engineering and Requirements System (RACER) 99.

(b) There are eight RACER OE parametric models, each applicable to different phases or purposes within an OE response project. These models are parametric in design (i.e., a top down system with equations or algorithms that model the conditions entered). The models calculate quantities of equipment, materials, and labor needed for the project by associating user inputs with the required and secondary parameters presented by the models. A detailed cost estimate can be produced by inputting the required and secondary parameters.

(2) Detailed Estimates.

(a) The OE program requires detailed contract procurement cost estimates for EE/CAs and Removal Actions. The recommended USACE software programs for detailed estimates are Micro Computer Aided Cost Engineering System (MCACES) Gold Version 5.3, MCACES for Windows, Lotus 123™ spreadsheets or Excel™ spreadsheets.

(b) The detailed cost estimate is the independent government estimate (IGE) to be used as the basis for negotiation on individual task orders under a particular IDO contract. The structure of the cost estimate should vary depending on the contract type, which for OE removal actions may include T&M, CPFF, Cost-Plus-Incentive Fee, or Fixed-Price.

(c) The cost estimator or project engineer may develop crew and productivity sheets for the various field activities or tasks in the SOW to determine the duration or number of hours for the various labor categories needed to support each task. The labor rates are burdened rates and reflect all contractor mark-ups.

(d) Materials and travel and per diem are duration driven and totaled separately from the labor. The materials estimated can be purchased, rented, or allocated to overhead.

3-11. Property Management. As a general policy, contractors are normally required to furnish all equipment and materials necessary to perform their contract tasks. However, when deemed to be in the best interest of the government, equipment/materials (e.g., vehicles, engineering controls, explosives, magnetometers, etc.) may be provided to the contractor by the government. If Government Furnished Property (GFP) is not provided but the contract requires specialized equipment or materials that are not included in the contractor's overhead rate, procurement or lease may be authorized. In all cases, property management will comply with the FAR, other applicable DOD and DA policies, and with the internal policies of the district or OE Design Center, as appropriate.

a. GFP Provided to Contractor. If GFP is provided to the contractor, the OE project team must be familiar with the FAR requirements concerning management of government property under the control of contractors. The district or OE Design Center property management personnel should be contacted prior to and during the response action to clarify and help resolve issues concerning GFP or property management.

b. Acquisition Planning. The decision to provide GFP to the contractor is normally made when the acquisition is being planned. A recommendation concerning GFP will be made to the CO/COR by a team consisting of the PM, project engineer, contract specialist, cost engineer, and property management specialist. If the government provides GFP, the contract will include appropriate clauses and the GFP will be identified in the contract's SOW. For all projects which exceed three months in field duration, the OE project team will either arrange to provide General Services Administration vehicles for the contractor's use or will document and explain the decision to have the contractor use commercial vehicles. Even in those cases where GFP is provided, it is likely that additional or other types of equipment will be required to complete the contract. Additional equipment may be purchased or leased by the contractor, if agreed upon at the time of contract award, or if subsequently requested in writing and approved by the CO/COR.

c. Acquisitions. Acquisitions must be carefully managed. The PM, with assistance from the team members, should ensure that the contractor submits the required number of quotes and the appropriate analyses for new acquisitions. Normally this means three quotes for each item and a comparison of rental versus purchase cost for each item. The team's cost engineer should review the contractor's Property Management Plan and each acquisition request from the contractor to determine whether the proposed costs are in line with the costs estimated in the IGE. The cost engineer and property management specialist should advise the PM and CO/COR whether the acquisition should be approved. It is important that the property management specialist be consulted and provided with all correspondence when acquisitions are approved, since the procured items become GFP as specified by the contract. The PM and OE project team should become familiar with the specific contract language which will specify the requirements for disposition of GFP not consumed during the contract.

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d. Property Management Plan.

(1) The contractor is required to submit a Property Management Plan as part of the Work Plan for a specific project. This plan should be carefully reviewed by the OE project team and primarily by the district or OE Design Center property management specialist.

(2) The property management plan will, as a minimum, include the following:

(a) A description and quantity of materials to be used.

(b) The source and rental/purchase costs of all materials.

(c) Adequate quotes for materials to be acquired.

(d) List of consumable supplies and personal property that are included in the contractor's overhead rate.

(e) A proposed storage plan.

(f) An ultimate disposal plan.

e. Quality Assurance.

(1) The government's on-site inspector should be completely familiar with the approved Property Management Plan in the Work Plan and should be notified by the PM of subsequently approved purchases. The on-site inspector may be the COR, if one is appointed for the project, or the on-site OE Safety Specialist if there is no COR appointed. The inspector should alert the PM or CO if items are procured without approval. Items costing less than the amount stated in the contract for minor purchases need not be reported unless they are questionable as to purpose and applicability to the project.

(2) The PM, contract specialist, and property management specialist should visit the project site during execution of the contract/task order to ensure that the contractor has the proper controls in place to manage and account for the project's property in accordance with the Work Plan.

(3) For other than fixed-price contracts, project personnel will carefully check the contractor's invoices to ensure that the procured items were approved as necessary prior to purchase and that all required documentation is included or maintained on file.

3-12. Real Estate Activities. The district is responsible for real estate activities for OE response actions at FUDS. The district Chief of Real Estate and/or the HQUSACE Deputy Chief of Staff for Real Estate should be consulted for additional information and project specific issues. The



purpose of real estate activities is to ensure that appropriate access agreements are obtained prior to entering a property to conduct an OE response action. Legally executed access agreements protect the government and contractor personnel from civil and/or criminal penalties for trespassing.

a. Landowner Notification.

(1) Prior to an OE Response Action. As a policy requirement rather than a legal requirement, immediately after a DERP-FUDS project is approved and prior to initiation of an OE response action, the district will forward to each current landowner a copy of the signed Findings and Determination of Eligibility (FDE) via a cover letter briefly explaining the proposed project and relevant policy decision, as appropriate. Properties having multiple owners may be notified through group mailings or public notices, where warranted. Figure 3-1 is an example of a landowner notification letter for a conventional OE site. This letter should be changed, as needed, so that it accurately reflects the situation for the specific site. A copy of the notification will be sent to the MSC and the Corps of Engineers Directorate of Military Programs, Environmental Division (CEMP-R), FUDS Branch. At such time an approved FDE will normally be available, upon request, to anyone who may have an interest. A general statement, without cost information, concerning FUDS funding and project priority based on risk management may be provided.

(2) Following an OE Response Action.

(a) If residual OE remains or is suspected after a response action at a FUDS, the owners will be apprised of the potential migration of OE. This information will be available in the Final Report and Project Completion Memorandum for the site.

(b) For OE response actions on active and BRAC sites, any residual or suspected OE will be documented in a Statement of Clearance and in the Finding of Suitability to Transfer (FOST). The FOST is needed to transfer the real property from DOD ownership. AR 200-1, Environmental Protection and Enhancement, provides additional details on a FOST. An example Statement of Clearance is presented later in this document as Figure 17-2.

b. Access Agreements.

(1) Legally executed access agreements are required for all OE response activities. The PM is responsible for obtaining the access agreements (i.e., rights-of-entry or easements) from the property owners and lessees, if applicable, affected by the activities. Access agreements are required regardless of whether the property is owned by a government entity (Federal, state, or local), Native American Tribal Government, private organization, citizen, etc.

(a) Right-of-Entry (ROE). A ROE is a legal instrument that allows legal access to property owned by another. A ROE can be used to provide protection to the government for projects that

Sample Landowner Notification Letter  
For  
Confirmed ordnance and explosives (OE) site - (conventional):

A confirmed OE site means OE is clearly present or there are reliable reports of OE being found.

1. The U.S. Army Corps of Engineers, under the Defense Environmental Restoration Program, has been assigned responsibility by the Department of Defense (DOD) to identify, investigate, and respond to environmental hazards that are a direct result of DOD activities at former installations.
2. As part of this program, a preliminary assessment of eligibility has been performed for the former (Former Site Name) located in (City), (County), (State) Site No. (FUDS INPR Site No.). This preliminary review of historical information and real estate records indicates that the site was used to (land use that initiated the INPR). The results of this investigation have confirmed the potential presence of OE. A danger therefore exists to anyone coming in contact with OE. Because we are not able to determine the full extent of this OE contamination, additional investigation has been recommended. This will include a search of historical archives, interviews of local residents and former workers at the site, and a site visit.
3. Since a potential hazard exists, (MSC or District) strongly recommends that no excavation work be performed at this time. The possibility of encountering OE is highly likely.
4. A (CERCLA Response Action such as PAE/SI, EE/CA, TCRA, or NTCRA) has been planned and is scheduled to begin as funds become available (Date or Fiscal Year). The results of this (Response Action) will determine if any further actions are necessary.
5. If you have any questions regarding the investigation of this site, please contact (Name, Office Symbol, Phone Number).

Figure 3-1. Conventional OE Site - Sample Landowner Notification Letter

are relatively small. Figure 3-2 is a sample ROE to be used for OE response actions. The language of this form may be used, without variance, without approval from the HQUSACE Office of the Deputy Chief of Staff for Real Estate. If any variance to the language of this form is proposed, then proposed documents, estates, and authorities should be included and approval by the HQUSACE Office of the Deputy Chief of Staff for Real Estate should be requested.

(b) Easement. An easement differs from a ROE in several ways. In theory, an easement is an interest in real estate whereas a ROE is not. Therefore, more authority and formality is required for the acquisition of an easement. Additionally, an easement provides protection for the government that a ROE lacks. For example, an irrevocable ROE binds only the current landowner, and may become void if the owner sells the land. Moreover, the title search and other processes required for the acquisition of an easement ensure that the owner has the authority to grant the interest the government needs. This protection would be important for a project on which the government intends to spend a considerable amount of money on contractor mobilization and project operation or requires access to the property for long-term monitoring.

(2) The HQUSACE INPR Approval Memorandum authorizes initiation of access agreement negotiation for the approved FUDS project. The district Chief of Real Estate is authorized to obtain ROEs for survey and exploration only. Work involving construction activities, such as excavation, could require a greater interest (e.g., an easement) which may necessitate HQUSACE authorization, depending on the length of time the activity will last. Requests for authority to acquire such other interests should be submitted to HQUSACE Office of the Deputy Chief of Staff for Real Estate. Refer to the DERP-FUDS Program Manual for additional guidance.

### 3-13. Environmental Considerations.

a. The district, in consultation with their OC and the OC supporting the OE MCX, as required, is the lead USACE agency on environmental issues related to OE response actions and is responsible for coordinating with regulators on these issues. Environmental issues will be addressed in project work plans prior to field work.

b. OE response actions must be conducted in compliance with current environmental regulations implemented by Federal, state, and local governments. The impact of these regulations will not be the same at each site due to differences in site geography and differences among state/local regulations, for example. Vigilance must be constantly exercised to ensure that applicable changes in Federal, state, or local regulations are addressed.

(1) Federal. The Federal statutes and regulations applicable to OE response actions are discussed in Chapter 1. These statutes include CERCLA, DERP, and RCRA. Regulations and

DEPARTMENT OF THE ARMY  
RIGHT-OF-ENTRY FOR  
OE RESPONSE ACTIONS

(Project, Installation or Activity)

Tract No., Address or Property I.D.

The undersigned, herein called the “Owner”, in consideration for the mutual benefits of the work described below, hereby grants the UNITED STATES OF AMERICA, hereinafter called the “Government”, a right-of-entry upon the following terms and conditions:

1. The Owner hereby grants to the Government an irrevocable and assignable right to enter in, on, over and across the land described in Schedule A, for a period not to exceed \_\_\_\_\_ months, beginning with the date of the signing of this instrument, and terminating with the earlier of the completion of the remediation or the filing of a notice of termination in the local land records by the representative of the United States in charge of the (Project Name), for use by the United States, its representatives, agents, and contractors, and assigns, as a work area for environmental investigation and response; including the right to store, move, and remove equipment and supplies; erect and remove temporary structures on the land; investigate and collect samples; (excavate and remove ordnance and explosives, pollutants, hazardous substances, contaminated soils, containerized waste, and replace with uncontaminated soil)\*; (and perform any other such work which may be necessary and incident to the Government’s use for the investigation and response on said lands, subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors and assigns, all such right, title, interest, and privilege as may be used and enjoyed without interfering with or abridging the rights and right-of-entry hereby acquired.

\* Add or substitute the following, as appropriate:

- a. demolish and dispose of former military structures and debris;
- b. dispose of ordnance and explosives by detonation;

(cont.)

Figure 3-2. Sample Right-of-Entry for OE Response Actions

DEPARTMENT OF THE ARMY  
RIGHT-OF-ENTRY FOR  
OE RESPONSE ACTIONS  
(cont.)

(Project, Installation or Activity)

Tract No., Address or Property I.D.

2. The Owner also grants the right to enter and exit over and across any other lands of the Owner as necessary to use the described lands for the purposes listed above.
3. All tools, equipment, and other property taken upon or placed upon the land by the Government will remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit of right of entry.
4. Upon expiration or termination of this right of entry, the Government will ensure restoration of the ground contour, replace any pavement or other cover which was removed or damaged for this work, establish a groundcover of grass on areas not otherwise covered, and reconnect any operating utility lines that were required to be disconnected or otherwise disrupted.
5. The land affected by this permit or right of entry is located in \_\_\_\_\_,  
State of \_\_\_\_\_ and is described as follows:

(INSERT SCHEDULE A - DESCRIPTION OF THE PROPERTY)

WITNESS MY HAND AND SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner (SEAL)

\_\_\_\_\_  
Owner (SEAL)

UNITED STATES OF AMERICA

By \_\_\_\_\_

Figure 3-2. Sample Right-of-Entry for OE Response Actions (Continued)

policies include the NCP, the DERP-FUDS Program Manual, and the EPA Military Munitions Rule.

(2) State Laws and Regulations. Environmental standards promulgated by the state in which the project is being performed must also be considered as potentially applicable to OE response actions. States may have primacy for enforcement of some of the above listed federal laws. Consultation with state environmental regulatory agencies is required to ensure that appropriate requirements have been addressed before implementing an NTCRA.

(3) Local Regulations. OE response actions must proceed in accordance with applicable local regulations. Local regulations that may apply to OE response actions include, but are not limited to, noise ordinances, traffic laws, and requirements for notifying utility companies prior to intrusive activities.

(4) Other Environmental Laws. Table 3.1 presents a summary of other primary environmental laws that may be applicable to OE response actions and Table 3.2 summarizes additional environmental laws and regulations that may be applicable at specific OE contaminated sites. Similarly, Table 3.3 presents a summary of DOD directives, instructions, and regulations relevant to environmental aspects of OE response actions. These tables may be used as a checklist in determining the applicable environmental laws for a specific project.

Table 3.1  
Other Primary Environmental Laws to be Considered During an OE Response Action

Law	Summary	Applicable (Y/N)
Clean Air Act (42 USC 1857-1857I; 40 CFR 50-100)	The Clean Air Act (CAA) regulates releases of specific substances into the air. Pursuant to the CAA, USEPA has promulgated National Ambient Air Quality Standards (40 CFR 50), National Emission Standards for Hazardous Air Pollutants (40 CFR 61), and New Source Performance Standards (40 CFR 60, 63). These standards must be consulted to identify those applicable to expected air releases resulting from OE response actions which utilize commercially available equipment to demilitarize explosives.	
Clean Water Act (33 USC 1251-1387; 40 CFR 100-149)	The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The CWA regulations that are most likely to apply to OE response actions include: surface water quality standards, permitting for direct discharges into surface waters, standards for indirect discharges to Publicly Owned Treatment Works, control of discharges of dredge and fill materials into surface waters, and storm water management requirements.	
Coastal Zone Management Act (16 USC 1451-1464; 15 CFR 921-933)	Federal projects that are anticipated to affect a coastal zone of a state with an approved State coastal zone management program (all coastal states except Georgia, Texas, Ohio, Indiana, Illinois, and Minnesota) must be consistent with the state's plan.	

Table 3.1 (continued)  
Other Primary Environmental Laws to be Considered During an OE Response Action

Law	Summary	Applicable (Y/N)
Endangered Species Act <i>(16 USC 1531-1544; 50 CFR 17, 401-424, 450-453)</i>	Requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat. All NTCRAs must be performed in accordance with these requirements through completion of a species presence determination, performance of a biological assessment, completion of a biological opinion, and, if required due to expected impacts, completion of an application of exemption.	
Fish and Wildlife Coordination Act <i>(16 USC 661-666)</i>	A project which will result in the structural modification of a natural stream or body of water must conform to the requirements of the Fish and Wildlife Coordination Act. The statute requires consultation with the US Fish and Wildlife Service to develop any appropriate protective measures before implementation of the project.	
National Environmental Policy Act of 1969 (NEPA)	When performing an OE response action, compliance with the procedural requirements of NEPA is not required. The overall NEPA requirement for a fully-informed and well-considered decision will be achieved through compliance with the NCP and DERP.	



Table 3.1 (continued)  
Other Primary Environmental Laws to be Considered During an OE Response Action

Law	Summary	Applicable (Y/N)
National Historic Preservation Act (16 USC 470; 36 CFR 60, 63, 68, 800; Executive Order 11593)	Provides for the preservation of historical and archaeological resources. If a response action is expected to impact an historical or archeological location (e.g., properties included on or eligible for the National Register of Historic Places), steps must be identified and enacted to preserve the data associated with the site's historical or archeological value. These steps are included in the EE/CA as a Cultural Resources Survey consisting of a literature search, field investigations, findings review, a determination of eligibility, removal action impact evaluation, and proposed mitigation methods for impacted historical and cultural resources.	
Occupational Safety and Health Act (29 USC 651-667)	This Act authorizes the OSHA to set and enforce safety and health standards to promote worker protection. OE response actions must be conducted in a manner which enforces OSHA Safety Standards.	
Wild and Scenic Rivers Act (16 USC 1271 et seq.; 36 CFR 297.4)	CERCLA actions which may affect the free-flowing characteristics, scenic, or natural values of a river designated on the National Rivers Inventory or within the National Wild and Scenic Rivers System are required to evaluate the primary impacts for consistency with the character of the river and develop mitigative measures as appropriate.	
Wilderness Act (16 USC 1131-1136; 50 CFR 35.5)	Response actions carried out under the preview of CERCLA must acquire exemption from the requirements of the Wilderness Act if the action will potentially impact designated wilderness areas as defined in 16 USC 1132. Actions in wilderness areas must be coordinated with federal and state environmental regulatory agencies to pursue this exemption.	

Table 3.2  
Additional Environmental Laws and Regulations for Consideration During OE Response Actions

Law/Regulation	Summary	Applicable (Y/N)
Abandoned Shipwreck Act (43 U.S.C. § 2101 et seq.)	Transfers title of abandoned shipwrecks on or eligible for the National Register of Historic Places or in protected formations (except shipwrecks on federal or Native American lands) to state jurisdiction.	
American Indian Religious Freedom Act (42 U.S.C. § 1996)	Protects and preserves religious freedoms of Native Americans, including access to religious sites and consultation with tribal leadership concerning human burial sites that federal projects might disturb.	
Antiquities Act of 1906 (16 U.S.C. § 431-433)	Protects historic and prehistoric ruins and objects of antiquity on federal lands. Authorizes scientific investigation of antiquities on federal lands, subject to permits and other regulatory requirements, including paleontological resources.	
Archeological and Historic Preservation Act (16 U.S.C. § 469-469c)	Directs federal agencies to notify the Secretary of the Interior when they find that any federal construction project or federally licensed activity or program may cause irreparable loss or destruction of significant scientific, prehistoric, historical, or archeological data. Also funds historical and archeological protection in such projects.	
Archeological Resources Protection Act (16 U.S.C. §§ 470aa-47011)	Prohibits the removal, sale, receipt, and interstate transportation of archeological resources obtained illegally (without permits) from public or Indian lands. Sets substantial criminal and civil penalties and authorizes federal agency permit procedures for investigations of archeological resources on public lands under the agency's control.	

Table 3.2 (continued)  
Additional Environmental Laws and Regulations for Consideration During OE Response Actions

Law/Regulation	Summary	Applicable (Y/N)
Bald and Golden Eagle Protection Act (16 U.S.C. § 668)	Governs activities and facilities that may threaten protected birds.	
Coastal Barrier Resources Act (16 U.S.C. § 3501 et seq.)	Restricts federal expenditures and financial assistance encouraging development of coastal barriers and associated habitats.	
Estuary Protection Act (16 U.S.C §§ 1221-1226)	Requires consideration by states and federal agencies of the need to protect, conserve, and restore estuaries.	
Farmland Protection Act (7 U.S.C. § 4201 et seq.)	Requires federal agencies to consider the effects of programs on farmland and to prevent conversion of farmland to nonagricultural uses.	
Federal Land Policy and Management Act (43 U.S.C. § 1701 et seq.)	Governs retention, management, land-use planning, disposal, and acquisition of public lands; requires regulation of use and occupancy of public lands.	
Fish and Wildlife Conservation Act (16 U.S.C. § 2901 et seq.)	Provides financial and technical assistance to states for creation and implementation of conservation programs for nongame fish and wildlife and encourages federal agencies to conserve nongame fish and wildlife.	
Forest and Rangeland Resources (16 U.S.C. §§ 1600-1614, 1641-1647, 1671-1676, 1681-1687)	Four acts that govern the management, conservation, and utilization of national forest and rangeland renewable resources.	

Table 3.2 (continued)  
Additional Environmental Laws and Regulations for Consideration During OE Response Actions

Law/Regulation	Summary	Applicable (Y/N)
Hazardous Materials Transportation Law	Provides for the adequate protection against the risks to life and property inherent in transporting hazardous materials in commerce.	
Historic Sites Act (16 U.S.C. §§ 461-467)	Authorizes designation of national historic sites and landmarks and interagency efforts to preserve historic resources.	
Marine Mammal Protection Act (16 U.S.C. § 1361 et seq.)	Requires protection of threatened and endangered marine mammals; provides fines for harming marine mammals.	
Marine Protection, Research, and Sanctuaries Act, (33 U.S.C. §§ 1401-1445)	Declares that it is national policy to regulate dumping of all types of materials into ocean waters, and to prevent or strictly limit ocean dumping of any material that would adversely affect human health or the marine environment.	
Migratory Bird Conservation Act (16 U.S.C. § 715 et seq.)	Establishes Migratory Bird Conservation Commission to recommend for purchase, rental, or acquisition by the Department of the Interior land or water suitable for use for migratory bird conservation.	
Migratory Bird Treaty Act (16 U.S.C. § 703-712)	Governs activities that may affect or threaten migratory birds or their habitats.	

Table 3.2 (continued)  
Additional Environmental Laws and Regulations for Consideration During OE Response Actions

Law/Regulation	Summary	Applicable (Y/N)
Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001-3013)	Prohibits the intentional removal of Native American cultural items from federal or tribal lands except under an Archeological Resource Protection Act permit and in consultation with the appropriate Native American groups. Requires returning burial remains, associated funerary objects, and objects of cultural patrimony to the appropriate Indian or Native Hawaiian organizations and tribes. Establishes Native American ownership of human remains and associated funerary objects discovered on federal lands.	
Public Buildings Cooperative Use Act (40 U.S.C. §§ 490, 601a, 606, 611, 612a)	Encourages adaptive reuse of historic buildings as administrative facilities for federal agencies or activities.	
Rivers and Harbors Act (33 U.S.C. § 401 et seq.)	Requires approval of the Secretary of the Army and the Chief of Engineers for construction of a bridge, dam, or dike over navigable waters.	
Sikes Act (16 U.S.C. § 670a-670o)	Authorizes the Secretary of Defense to carry out a program of planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation on military reservations. Also requires the Departments of the Interior and Agriculture to establish conservation programs on public lands.	

Table 3.2 (continued)  
Additional Environmental Laws and Regulations for Consideration During OE Response Actions

Law/Regulation	Summary	Applicable (Y/N)
Soil and Water Resources Conservation Act <i>(16 U.S.C. § 2001 et seq.)</i>	Creates coordinated soil and water conservation program to identify and address long-term national needs.	
Watershed Protection and Flood Prevention Act (WPFPA) <i>(6 U.S.C. § 1001 et seq.; 33 U.S.C. § 701-1; Executive Order 11988)</i>	Governs reservoir development and stream modification projects including specific wildlife habitat improvements.	
Wild Free-Roaming Horses and Burros Act <i>(16 U.S.C. §§ 1331-1340)</i>	Protects from capture, harassment, and death free-roaming horses and burros, and considers them part of the natural system of public lands.	

Table 3.3  
Department of Defense Directives, Instructions and Regulations for OE Response Actions

Directive/Regulation	Title	Contents/Regulations	Applicable (Y/N)
Department of Defense Explosives Safety Board DOD 6055.9-STD	DOD Ammunition and Explosives Safety Standards	Primary DOD regulation that requires UXO cleanup of DOD lands prior to transfer.	
DOD Directive 1000.3	Safety and Occupational Health Policy for the Department of Defense	Establishes the basis for all DOD safety, fire protection, and occupational health programs	
DOD Directive 4165.60	Solid Waste Management-Collection, Disposal, Resource Recovery and Recycling Program	Sets DOD policy and procedures for the DOD comprehensive program of solid waste collection, disposal, material recovery, and recycling in accordance with USEPA guidelines, NEPA, and RCRA.	
DOD Directive 4500.9	Transportation and Traffic Management	Describes general DOD transportation and traffic management policies.	
DOD Directive 4700.4	Natural Resource Management Program	Sets DOD policy for management and protection of natural resources.	
DOD Directive 4710.1	Archeological and Historical Resources Management Program	Establishes DOD policies and procedures for protection and management of archeological and historical resources.	

Table 3.3 (continued)  
Department of Defense Directives, Instructions and Regulations for OE Response Actions

Directive/Regulation	Title	Contents/Regulations	Applicable (Y/N)
DOD Directive 5100.50	Protection and Enhancement of Environmental Quality	Assigns responsibilities and establishes policies and procedures for protection and enhancement of environmental quality in consonance with federal policy and other DOD issuances.	
DOD Directive 6050.1	Environmental Effects in the United States of DOD Actions	Implements Council on Environmental Quality regulations and provides policy and procedures to enable DOD officials to take into account environmental considerations when considering the authorization or approval of major DOD actions in the United States.	
AR 200-1	Environmental Protection and Enhancement	Prescribes Army policies, responsibilities, and procedures to protect and preserve the quality of the environment.	
AR 200-2	Environmental Effects of Army Actions	Contains Army procedures for implementing NEPA.	
ER 385-1-92	Safety and Health Requirements for Hazardous, Toxic, and Radioactive Waste and Ordnance and Explosive Waste Activities	Identifies the safety and occupational health documents and procedures required to be developed and implemented by USACE elements and their contractors responsible for executing HTRW and OE activities.	



Table 3.3 (continued)  
Department of Defense Directives, Instructions and Regulations for OE Response Actions

Directive/Regulation	Title	Contents/Regulations	Applicable (Y/N)
ER 1110-1-263	Chemical Data Quality Management for Hazardous Waste Remedial Activities	Prescribes responsibilities and procedures for planning and executing chemical data acquisition including sampling and analysis. It is applicable to all phases of all projects, regardless of program or whether the work is done under contract or in-house. Includes OE projects where environmental samples are collected for chemical analysis.	
ER 1110-1-8153	Ordnance and Explosives Response	Establishes roles and responsibilities for USACE elements in managing and executing OE response actions and authorizes and provides for the delegation of such roles and responsibilities.	